



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

07/03/96

REPLY TO THE ATTENTION OF:

July 3, 1996

George B. Davis
Varnum, Riddering, Schmidt & Howlett
Bridgewater Place
P.O. Box 352
Grand Rapids, Michigan 49501
FAX (616) 336-7000

US EPA RECORDS CENTER REGION 5



468966

Re: *De Minimis* Administrative Order by Consent
Docket No. V-W-96-340
Albion-Sheridan Landfill Site
Albion, Michigan

Dear Mr. Davis:

Enclosed is a copy of U.S. EPA's response to the City of Albion's comment dated June 7, 1996 regarding the above referenced matter.

If you have any questions regarding this matter, please do not hesitate to call me at (312) 886-6831.

Sincerely yours,

Kurt N. Lindland
Assistant Regional Counsel

Enclosure

cc: Leah Evison/EPA/SR-6J w/o Enclosure

Attachment 1

Summary of Comments
In re Albion-Sheridan Landfill Site
De Minimis Settlement Docket No.V-W-96-340

1. Comment #1: The commentor objects to a reference in the Administrative Order on Consent regarding the City of Albion as the "operator" of the Site. The commentor contends that the City of Albion is not an "operator" of the Site, and that the agreement should therefore be withdrawn.

Response: EPA disagrees with this comment. EPA has determined that the City of Albion is an "operator" of the Site, as that term is defined under CERCLA Section 101(20)(A) and Section 107(a)(2). Courts have found that "actual" control of a landfill by a municipality is required to hold the municipality liable as an "operator" under CERCLA. In deciding whether the control is "actual", courts look to whether the entity had the "authority" to control the operations. In this case, the City of Albion not only had the "authority" to control the operations of the landfill, but it exercised that authority through its decisions which affected the daily operation of the landfill. For example, not only did the City contract for the use of the landfill by the residents and businesses of Albion, but the City also regulated the use of the landfill, determined which wastes would be accepted by the landfill and dictated disposal arrangements, determined the hours of operation for the landfill and continued to set landfill disposal rates. These and other facts support EPA's position that the City of Albion is an "operator" of the site under CERCLA.